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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,789	10/05/2001	Lynn Ann Casey	005222.00135	1077

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EXAMINER
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PLUCINSKI, JAMISUE A

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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04/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/970,789</p>	<p><b>Applicant(s)</b> CASEY ET AL.</p>	
	<p><b>Examiner</b> JAMISUE A. PLUCINSKI</p>	<p><b>Art Unit</b> 3629</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 11-37,42-51 and 59-68.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Jamisue A. Plucinski/  
Primary Examiner, Art Unit 3629

Continuation of 3. NOTE: The applicant has changed the word "determining" to the word "obtaining" to overcome a 112 1st paragraph rejection, however, by changing the step, it changes the scope of the claims, therefore would require further search and examination..

Continuation of 11. does NOT place the application in condition for allowance because: With respect to Applicant's arguments in terms of non-functional descriptive material. The examiner did not ignore any claim language, however stated in the rejection that certain claim language does not functionally effect the method and therefore is considered to be non-functional descriptive material. The claim stores information in the database, such as priority level, arrival date, importer name, risk level, and commodity name, none of the further steps use any of this information as a specific function, therefore the fact that information is stored is functionally related to the method, but what type of information is stored is not. For example, in the database it claims storing a priority level, the storing of the information is nonfunctional, it is not until a specific step uses the priority level in a specific function (i.e. retrieves the priority level and inspects the items with a higher priority level first), that the specific information becomes functional. As stated in the rejection is also not enough to simply state that it is used, but the claims must state how it is used, to make it functional. For example claim 60 states the rating is used, however never states how it is used, therefore the rating is still non-functional.

With respect to Applicant's argument in terms of the 112 1<sup>st</sup> paragraph rejection. The amendment above is not being entered, therefore the rejection is not considered to be persuasive. If the applicant feels like the specification has support for the word determining, then the applicant is invited to point out specific areas in the specification which show the support for the claim limitation.

With respect to Applicant's argument that Column 12, lines 1-11 does not show a task list, however that section was used to show the computer, the task list was shown and explained by the examiner further in the paragraph and referenced column 10. The applicant is not considering that to be a task list due to the fact that the image from the x-ray is considered to be part of the inspection. However the inspection of McClelland is done in multiple parts, the first inspection may be the x-ray, but there is also a secondary inspection, which the examiner is considered to be the inspection of the present method.

With respect to Applicant's argument that McClelland teaches away from using an on-site inspection. As stated in the rejection, McClelland discloses that each computer can be commenced to each machine and therefore can be considered on-site. Furthermore, remote, does not necessarily mean that it has to be off-site.

With respect to Applicant's argument that McClelland does not teach research tools: the applicant never defines the research tools and how they are used and for a particular reason... therefore the examiner considers McClelland's image search tools and training tools to be search tools.

Applicant's arguments are not considered to be persuasive, therefore rejection stands as stated in the final office action.